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ABSTRACT

Selected issues related to the special populations provisions of the Perkins Act are examined in this paper. Special populations' access to and participation in vocational education are reviewed, and major Perkins Act provisions addressing special populations and congressional intent behind the provisions are summarized. The U.S. Department of Education's interpretation of special population provisions and recent proposed reinterpretation of the provisions are discussed. Legal provisions other than the Perkins Act that protect and guarantee the rights of members of certain special populations in educational programs are outlined. Special attention is paid to civil rights statutes, regulations, and guidelines. The following policy alternatives available to the 104th Congress as it prepares to reauthorize the Perkins Act are analyzed: (1) use current civil rights statutes to ensure access; (2) enact current regulations; (3) enact the Department of Education's proposed regulatory changes; and (4) provide access for all students to high quality programs. The implications of the four policy alternatives with respect to educational equity and quality and unfunded mandates were considered. Appended is a summary of the major Perkins Act provisions for special populations. (MN)

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CRS Report for Congress

ED 378 368

Vocational Education and Special Populations: Reauthorization Issues

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November 29, 1994

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VOCATIONAL EDUCATION AND SPECIAL POPULATIONS: REAUTHORIZATION ISSUES

SUMMARY

The 104th Congress will consider the reauthorization of the Carl D. Perkins Vocational and Applied Technology Education Act, which authorizes Federal grants to support State and local vocational education. A central purpose of the Perkins Act is ensuring that "special populations" (including students with disabilities and disadvantaged students) have access to vocational education. This report examines issues related to the special populations provisions of the Perkins Act.

In the 1990 reauthorization of the Perkins Act, Congress made major changes in the provisions for special populations by removing most specific set-asides of funds for these groups and replacing them with requirements for State and local assurances of access for special populations. These changes were contentious at the time, and subsequent interpretations of the statutory language by the U.S. Department of Education (ED) have added to the controversy.

ED initially interpreted the assurances to apply essentially to **projects** funded under the Perkins Act. Under this interpretation of the Act, States and local recipients are not required to use **nonfederal** funds to comply with requirements related to special populations. Some Members of Congress and representatives of special populations objected to this interpretation, maintaining that it does not conform with what Congress intended in the 1990 amendments to the Perkins Act.

Recently ED proposed broadening its interpretation of the assurances to apply to **all** vocational education **programs and activities** whether they receive direct Federal funding or not. Although the 103d Congress has prevented ED from implementing this reinterpretation until the Perkins Act is reauthorized, the participation of special populations is likely to spark debate when the 104th Congress considers reauthorizing the Act, and Members of Congress will have to evaluation a variety of policy options.

Possible options include: relying on current civil rights laws to ensure special populations' access; incorporating current regulations into the Perkins Act; incorporating ED's proposed reinterpretation of the special populations provisions into the Act; and concentrating funds on improving vocational education for all students with assurances that all students have access to high quality vocational education. While each of these alternatives has advantages, each raises possible concerns for some groups. Some worry that "limited" interpretations of special populations' assurances will deny access to substantial numbers of students with disabilities, disadvantaged students, and members of other special populations. Others maintain that unlimited guarantees of access for these populations will reduce or eliminate funds available for overall program improvement--another central purpose of the Perkins Act. A related concern is that "broader" interpretations of the Act would create new entitlements to services for special populations and result in an "unfunded Federal mandate."

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VOCATIONAL EDUCATION AND SPECIAL POPULATIONS: REAUTHORIZATION ISSUES

INTRODUCTION AND BACKGROUND

The Carl D. Perkins Vocational and Applied Technology Education Act authorizes Federal grants to supplement State and local vocational education through FY 1995. A central purpose of the Perkins Act as currently authorized--and prior legislation dating back to 1963--is ensuring that "special populations" (including individuals with disabilities and the disadvantaged) have access to vocational education. Prior to 1990, the Act reserved specific percentages of basic State grants for special populations. The 1990 reauthorization of the Perkins Act removed most of those set-asides and replaced them with requirements for State and local assurances of access for these groups. These changes were contentious at the time, and subsequent interpretations of the statutory language by the U.S. Department of Education (ED) have added to the controversy. ED initially interpreted the assurances to apply essentially to **projects** funded under the Perkins Act. More recently ED has proposed broadening its interpretation to all vocational education **programs and activities** whether they receive direct Federal funding or not.

Although the 103d Congress prevented ED from implementing this reinterpretation until the Perkins Act is reauthorized, the participation of special populations is likely to spark debate when the 104th Congress considers reauthorizing the Act. Possible issues and questions include:

- Should the Perkins Act focus on the access of special populations to **federally funded** vocational education projects, or should the focus be broader--requiring that those receiving Perkins funds guarantee special populations' access to **all** vocational programs and activities, whether Federal resources directly fund these programs or not?

- What does access to vocational education mean? Is it access to any vocational education or just to "high quality" programs? Is it the opportunity to participate in programs, or does it require services necessary to succeed in programs?

- Are special populations "overrepresented" in vocational education--especially in possibly inferior programs leading to "dead end" jobs or to no jobs at all, and if so, how can this be prevented?

Overview of the Report

This report examines issues related to the special populations provisions of the Perkins Act. The report contains:

- An overview of vocational education, the Perkins Act, and special populations;
- A summary of major Perkins Act provisions addressing special populations and congressional intent behind those provisions;
- A discussion of ED's interpretation of the special population provisions (as evidenced in the final Perkins Act regulations), ED's recent proposed reinterpretation of those provisions, and subsequent reactions;
- An overview of legal provisions other than the Perkins Act that protect and guarantee the rights of members of some special populations in educational programs; and
- Analysis of policy alternatives that the 104th Congress might consider during the Perkins reauthorization, and possible implications of these alternatives, including concerns about potentially unfunded Federal mandates.
- An appendix with a summary of special population provisions considered during the last reauthorization of the Perkins Act in 1990.

To research issues related to services for special populations, we reviewed legislative documents as well as related studies by the General Accounting Office (GAO), the U.S. Department of Education (ED), and SRI International. In addition, we interviewed current and former congressional staff who participated in the 1990 Perkins Act reauthorization, Department of Education staff, and representatives of relevant interest groups. While none of these interviews was conducted "off the record," as a courtesy, we have not quoted individuals directly or attached names to individuals' observations. We want to thank all those who took the time to discuss special populations and the Perkins Act with us.

Vocational Education and Special Populations

In thinking about vocational education and special populations, it is useful to keep in mind the Perkins Act's definition of these terms. The Act defines **vocational education** as educational programs composed of a sequence of courses aimed at preparing individuals for paid or unpaid employment in current and emerging occupations that require less than a baccalaureate degree (section 521(41)). The Act defines **special populations** to include: individuals with disabilities, economically and educationally disadvantaged individuals (including foster children), limited English proficient individuals, "individuals who participate in programs designed to eliminate sex bias," and individuals in correctional institutions (section 521(31)).

Based on the Act's definition of vocational education, the GAO[1] reports that in school year 1990-91 about 3.6 million **students in grades 10-12** (nearly 50 percent of total enrollment in those grades) were enrolled in vocational programs.[2] Most of these students (80 percent) received their vocational education in "comprehensive" high schools, which offer academic as well as vocational education. Another 17 percent enrolled in vocational courses at some kind of vocational specialty school such as a vocational high school or area vocational-technical school. The remaining 3 percent attended special schools such as juvenile detention centers and schools for individuals with disabilities.[3] A substantial percentage of those enrolled in secondary vocational education could be classified as members of special populations: approximately 31 percent were educationally or economically disadvantaged, approximately 8 percent were individuals with disabilities, and approximately 4 percent were limited English proficient (LEP).[4]

The GAO reports that about 1.8 million individuals enrolled in **postsecondary vocational programs** in the fall of 1990.[5] Most of these attended community colleges (66 percent) or public technical institutes (20 percent). The balance attended other institutions such as private nonprofit institutes.[6] Of those in postsecondary vocational programs, 17 percent were educationally or economically disadvantaged, 4 percent were individuals with disabilities, and 4 percent were LEP.[7]

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[1]General Accounting Office. *Vocational Education: Status in School Year 1990-91 and Early Signs of Change at Secondary Level*. GAO/HRD-93-71. Washington, July 1993. (Hereafter cited as GAO, *Vocational Education: Status in School Year 1990-91)*

[2]The GAO collected data from surveys of nationally representative school districts and schools. It is important to realize that estimates of vocational students can vary widely depending on the data used and the definition of a "vocational student." The GAO reproduced the Perkins Act definition of vocational education in its questionnaires, stipulated that "personal growth" and exploratory courses, such as personal typing, be excluded, and asked respondents to report numbers of students in vocational programs. Another approach, which the 1994 National Assessment of Vocational Education employed, is classifying students by course credits as reported on student transcripts rather than asking teachers or principals. If one then defines a vocational education student as earning 3 credits (i.e., 3 1-year courses) in a specific vocational program area, about 25 percent of secondary students would be classified as vocational education students. If earning 4 or more credits is the criterion, about 8 percent meet this definition. (U.S. Department of Education. Office of Educational Research and Improvement. *Participation and Quality of Vocational Education*. National Assessment of Vocational Education. Final Report to Congress, v. 2. Washington, June 30, 1994. p. 3.)

[3]GAO, *Vocational Education: Status in School Year 1990-91*, p. 20.

[4]GAO, *Vocational Education: Status in School Year 1990-91*, p. 21, figure II.1.

[5]U.S. General Accounting Office. *Vocational Education: Status in 2-Year Colleges 1990-91 and Early Signs of Change*. GAO/HRD-93-89, July 1993. (Hereafter cited as GAO, *Vocational Education: Status in 2-Year Colleges)* The GAO apparently did not survey private, for-profit schools, which provide postsecondary vocational training to about 1.4 million students but rarely receive Perkins Act funds.

[6]GAO, *Vocational Education: Status in 2-Year Colleges*, p. 20, figure II.2.

[7]GAO, *Vocational Education: Status in 2-Year Colleges*, p. 21, figure II.3.

GAO data also suggest that special populations have access (at least broadly defined) to vocational education. At the secondary level, the GAO data show that in 1990:[8]

- 23 percent of all students in grades 10, 11, and 12 were disadvantaged compared to 31 percent of all students enrolled in vocational education program.
- 7 percent of all students were reported as having disabilities compared to 8 percent of those enrolled in vocational education programs.
- 4 percent of all students and 4 percent of those in vocational education programs were limited English proficient.

At the postsecondary level, GAO data indicate that in 1990:[9]

- 15 percent of all students were disadvantaged versus 17 percent of those in vocational education programs.
- 3 percent of all students were reported as having disabilities versus 4 percent in vocational education programs.
- 6 percent of all students versus 4 percent of those in vocational education programs were limited English proficient.

Some conclude from these and other data that special populations--especially disadvantaged and disabled students--are "overrepresented" in some vocational education programs and schools.

Access of special populations to vocational education is particularly important because of evidence that vocational education produces positive results for at least one key group--individuals with disabilities. A major longitudinal study of youth and young adults with disabilities found that within 2 years of leaving high school, students with disabilities who had had occupational training were 9 percent more likely to be competitively employed, and those who had vocational education that included work experience were 14 percent more likely to be employed.[10] These effects are even larger for students with less severe disabilities (e.g., learning disabilities, speech impediments, and mild retardation), who make up more than half of all students with disabilities. Enrollment in secondary vocational programs was positively correlated with increased chances of employment and increased monetary compensation. Vocational training in secondary school was also

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[8]GAO, *Vocational Education: Status in School Year 1990-91*, p. 60 and 64.

[9]GAO, *Vocational Education: Status in 2-Year Colleges*, p. 21, figure II.3.

[10]Wagner, M., et al. *What Makes a Difference: Influences on Postsecondary Outcomes of Youth With Disabilities*. SRI International, 1993. Table 8-18, p. 8-37. See also: SRI International. *What Happens Next? Trends in Postschool Outcomes of Youth with Disabilities*. Dec. 1992.

positively correlated with improved school performance for students with disabilities as measured by decreased absenteeism and drop-out rates for these students.

Overview of the Perkins Act

Authorized through FY 1995 with an automatic 1-year extension of authorization under the General Education Provisions Act (GEPA),[11] the Carl D. Perkins Vocational and Applied Technology Education Act provides Federal assistance for secondary and postsecondary vocational education. The Act authorizes a total of $1.6 billion for FY 1991 and "such sums as may be necessary" for FY 1992 through 1995.

Perkins Act appropriations have increased from $937 million in FY 1990 to $1.18 billion in FY 1995 (a 26 percent increase). Taking inflation into account, the increase over those years was 11 percent. Appropriations for Perkins basic State grants, which represents the bulk of the funding, increased nearly 16 percent between FY 1990 and FY 1995 (from $841 million to $973 million) but only 2 percent when adjusted for inflation.

Accounting for less than 10 percent of funding nationwide for vocational education, the Perkins Act supplements State and local expenditures for these programs. Basic State grants are distributed to States mainly in proportion to population with adjustments for variation in per capita income and a State minimum grant of 0.5 percent. States then distribute funds to eligible local recipients[12] based mainly on measures of local poverty levels. Local recipients use Perkins Act funds to improve vocational education (for example, by purchasing more up-to-date equipment or providing inservice training for teachers) and to provide access for members of special populations to vocational education (for example, by providing supplementary services such as modified equipment or special instruction).

THE PERKINS ACT AND SPECIAL POPULATIONS

Provisions for Special Populations

Prior to the 1990 reauthorization, the approach taken by Federal vocational education legislation was to reserve separate funds to be used to serve special populations. Funds could be used for supplementary services such as curriculum modification, equipment or facilities modification, supportive personnel, or special instructional aids and devices. Set-aside funds could be used only for the excess costs related to meeting the special needs of these students (i.e., the additional expenditures beyond those spent for regular students).

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[11]P.L. 101-392, the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, which became law on Sept. 25, 1990, made comprehensive amendments to the Carl D. Perkins Vocational Education Act of 1984 and extended the authorization of Perkins Act programs, as amended, through FY 1995. Section 414 of GEPA automatically extends expiring education program authorizations for an additional fiscal year unless Congress acts. For an overview of the major changes made by P.L. 101-392, see: U.S. Library of Congress. Congressional Research Service. *Carl D. Perkins Vocational and Applied Technology Act: Reauthorization Overview*. CRS Report for Congress No. 94-427 EPW, by Richard N. Apling and Paul M. Irwin. Washington, 1994.

[12]Eligible recipients include local educational agencies, area vocational education schools, intermediate educational agencies, postsecondary educational institutions, and State corrections educational agency (section 521(16)).

By 1984, 57 percent of States' basic grant funds[13] was set aside for programs for special populations: 10 percent for handicapped students, 22 percent for economically and educationally disadvantaged students, 8.5 percent for single parents and homemakers, 3.5 percent for programs to eliminate sex bias, 1 percent for correctional institutes, and 12 percent for training and retraining of adults. The remaining 43 percent of a State's basic grant was to be used for "program improvement" to enhance or expand existing vocational education services for all students.

During the 1990 Perkins reauthorization, Congress reconsidered the methods of targeting Federal funds. In 1989, two reports, one conducted by the National Assessment of Vocational Education (NAVE)[14] and the other by the GAO,[15] provided Congress with assessments of the impact of past vocational education legislation. Although the intent of previous legislation had been to increase the access of special populations to *high quality* vocational education programs, both the NAVE and the GAO concluded that the set-aside funds were not adequately meeting the needs of special populations. Findings from the two reports indicated that:

- Multiple set-asides caused a fragmentation of resources, with many local recipients receiving extremely small grants.
- Resources were not being distributed as intended; in some instances, wealthy school districts received more per pupil allocations than poor districts.
- Set-asides were often viewed as a maximum rather than a minimum amount of funding for special populations.
- Economically distressed schools were less likely than those with more resources to use funds to improve and modernize their vocational programs.
- Some local and State administrators complained that set-asides imposed burdensome bookkeeping and stringent fiscal requirements.

Congress addressed these problems by creating formulas for intra-State grant distribution tied mainly to poverty measures, removing most set-asides for services for special populations,[16] and requiring State and local recipients of basic grant funds to assure

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[13]Does not include funds for State administration.

[14]ED. National Assessment of Vocational Education. *Final Report: Summary of Findings and Recommendations*, v. I. Washington, July 1989. 145 p.

[15]U.S. General Accounting Office. *Vocational Education: Opportunity to Prepare for the Future*. GAO/HRD-89-55. Washington, May 1989. 75 p.

[16]A limited number of set-aside programs were kept: 1 percent of State grants for criminal offenders; and 10.5 percent for programs to promote sex equity and to serve single parents, displaced homemakers, and single, pregnant women.

that special populations have equal access to high quality vocational programs.[17] The Perkins Act contains three main provisions to ensure that members of special populations will be served:

- States desiring to receive funds from the basic State grant allotment must submit a plan to the Secretary of Education. Among other conditions, the plan must address various criteria for serving members of special populations. Arguably the key criterion is the assurance that special populations will be provided **equal access** to the **full range of vocational education programs** available to students who are not members of special populations (section 118(a)(2)).

- States distribute most of their basic grants to local "eligible recipients" such as school districts and community colleges. These recipients must submit applications or plans and make various assurances regarding special populations (section 240 and section 118(c)). These assurances include assistance to members of special populations "to enter vocational education programs" and provision of "supplementary services"[18] to members of special populations.

- Eligible recipients must meet certain requirements and priorities in their use of Perkins Act funds (section 235). These are: to use funds to improve vocational education at a limited number of sites or in a limited number of programs **with the full participation** of special populations; to give **priority** to serving sites or programs serving **the highest concentration** of members of special populations; and to use funds in programs that, among other things, provide **equitable participation** for members of special populations.

Congressional Intent

These changes were controversial at the time, and subsequent Department of Education interpretation of the Act--especially regarding the scope of assurances for special populations--has led to disagreement about what Congress intended. As the 104th Congress prepares to reconsider the 1990 amendments, it may be useful to review what Congress intended those amendments to achieve with respect to special populations.

There are several possible sources of information about intent, including committee reports accompanying committees' versions of the bill, Members' floor statements when the bill was considered and subsequent statements, ED's interpretation as reflected in regulations, and staff recollections about what final language was meant to convey.

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[17]See the appendix for background on the creation of special population provisions resulting from the 1990 reauthorization.

[18]These services are defined as "curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices" (section 521(38)).

However, the central clues to congressional intent must be found in the Act itself.[19] We first discuss interpretations of the key passages of the statutory language. Then we review supporting legislative documents. Finally we summarize observations on congressional intent made during our interviews.

Statutory Language. Some (presumably including the current Secretary of Education[20] and the Assistant Secretary for Vocational and Adult Education) would argue that:

- Section 118 stipulates that a condition for States receiving Perkins funding is that special populations have equal access to the same kinds of vocational programs that other students have access to.

- The term "program" in section 118 and elsewhere in the Act refers to the complete vocational education enterprise in the State, not just specific projects directly funded under the Perkins Act; therefore, assuring special populations' equal access is extended to all State and local vocational programs, once the State accepts Perkins funds.

Others (including the previous Secretary of Education[21] and the previous Assistant Secretary for Vocational and Adult Education) maintain that in some respects the Act is ambiguous, and that congressional intent is unclear.[22] Those taking this position might ask, for example, what it means to provide "**equal access**" for special populations to "a full range of programs" and argue that there is not always consensus on the meaning of these terms. Most would agree that equal access requires more than just physical entry into a program. Few would argue that a hearing-impaired student had equal access to a

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[19]The weight given to legislative history by courts in interpreting congressional intent has been the subject of extensive legal discussion and analysis. For the purposes of this report, it is sufficient to note that the general rule is that if a statute is plain on its face, a court will not look further. However, this rule has often been cited merely as a prelude to the examination of legislative history. Once a court looks to legislative history, generally courts look first to the conference reports, and then to the committee reports. Floor debates are generally held to be less reliable since it is difficult to determine if the comments were agreed upon by the rest of the legislative body. Hearings and statements made after the enactment of the legislation are given little weight. For more detailed discussions of this issue see: Abrahamson and Hughes. *Shall We Dance? Steps for Legislators and Judges in Statutory Interpretation*. 75 Minn. L. Rev. 1045. 1991.; Sutherland Stat. Const. 5th ed. 1991.

[20]In letters sent to Representative Goodling and Senator Kassebaum, Secretary of Education Riley stated that ED's proposal for revised regulations would reflect an interpretation "that a recipient of funds under Title II, Part C of the Perkins Act provide for the full participation of members of special populations, including the provision of supplementary services, **would apply to the recipient's entire vocational education program**, not merely its projects funded by the Perkins Act." (Letters dated July 13, 1994. p. 2. (Emphasis added.))

[21]In a letter to Representative William Ford, then-Secretary of Education Alexander justified the Department's interpretation of the Perkins Act. See p. 14.

[22]Secretary Riley in letters to Representative Goodling and Senator Kassebaum notes that "we believe the statute is ambiguous and the current regulations are legally supportable." His justifications for considering revised regulations are that current regulations do not "best carry out congressional purpose" and that current policy "may contribute to some of the problems with access and success in vocational education for special populations." (p. 2.)

class if he or she were not supplied with a sign language interpreter or some other means to actively participate in the class. Similarly, student with limited understanding of English could hardly be said to have equal access if a class is taught only in English. Other cases are less clear. Is equal access denied if a program fails to ensure that all students have the prerequisites to succeed in the program? For example, if a computer programming course requires reading at the 12th-grade level, would a program that did not provide reading tutors deny equal access to those who could not comprehend the text; or would it be justifiable to turn away these students on the grounds that they are not qualified to take the course?

Disagreements can arise about the meaning of "**a full range of programs**." Some argue that the Act is inconsistent in its use of the term "program." Does assurance of access for special populations mean access to all vocational programs or activities, or does it just apply to specific programs funded with Perkins Act funds? Those arguing for the latter interpretation might point to the assurance required of local recipients to:

> *assess the special needs of students participating in **programs receiving assistance under title II** with respect to their successful completion of the vocational program in the most integrated setting possible (section 118(c)(2)).*

Some might argue that the needs assessment is only required for students in particular programs aided under title II (basic State grants) of the Perkins Act, not for students enrolled in other vocational programs that do not receive direct Perkins assistance.

Legislative Documents. Supporting congressional documents and Members' statements do not settle these differences. The **Senate report** accompanying S. 1109[23] discusses a "three-pronged" approach for improving vocational education services for special populations:

> *(1) by driving money directly to the local level; (2) by requiring that each recipient of dollars provide the supplementary services necessary to ensure full and equitable participation in programs; and (3) by adding new requirements for monitoring of services at the local level and at the State level.*[24]

To some, the second "prong" appears to require local recipients to provide all supplementary services needed for special populations to participate fully and equitably in any vocational education programs.

The **House report** accompanying H.R. 7[25] seems to limit services to members of special populations "within a building receiving funds." Explaining the intent behind the substate formulas, the report notes that:

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[23]U.S. Congress. Senate. Committee on Labor and Human Resources. Report to Accompany S. 1109. S. Rept. 101-221. Washington, Nov. 21, 1989.

[24] Ibid., p. 19.

[25] U.S. Congress. House. Committee on Education and Labor. Report to Accompany H.R. 7. H. Rept. 101-41. Washington, Apr. 28, 1989.

To clarify our intent, the Committee wishes to state that the use of a count for handicapped children of a certain age is only meant to direct the funds to local recipients, such as school districts. This provision is not meant to indicate a limitation on eligibility of handicapped individuals for services. All handicapped individuals--regardless of age--having need for applied technology education ***within a building receiving funds****--would be eligible.*[26]

A similar point must be made regarding the use of Chapter 1 funds and Pell grants as a means to distribute funds locally. Once these Federal funds reach the appropriate local buildings, ***all educationally disadvantaged students within those buildings would be eligible for supportive services needed to participate in programs.***[27]

Aspects of **the floor debate of the House and Senate bills** seemed to highlight various perspectives. Some statements emphasized program improvement as a paramount goal of the legislation.

Representative Goodling: For 30 years we have talked about access, and rightfully so. Particularly in the vocational education bill, we have talked about access, because in some areas access was a serious problem. When we began writing this bill, however, we asked the question: Access to what? And if we could not answer, "access to quality" or "access to excellence," then access was not good enough . . . . Above all, we talk [in H.R. 7] about program improvement . . . . If it is not access to excellence, then simple access is not any good . . . . we insure that the money must be used in order to produce program improvement.[28]

Senator Kassebaum: This legislation . . . . recognizes that expanding the access of disadvantaged populations is meaningless unless that access is provided to high quality programs.[29]

In other cases, statements seemed to concentrate on how Perkins Act funds in particular should be used:

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[26]Ibid., p. 10. (Emphasis added.)

[27]Ibid., p. 10. (Emphasis added. Chapter 1--now title I--of the Elementary and Secondary School Act is the major Federal compensatory education program.)

[28]Remarks in the House. *Congressional Record*, v. 135, no. 57. May 9, 1989. p. H1703. (Hereafter cited as *Congressional Record*, v. 135)

[29]Remarks in the Senate. *Congressional Record*, v. 136, no. 41. Apr. 5, 1990. p. S4088. (Hereafter cited as *Congressional Record*, v. 136)

Representative Hawkins: It is the intent of the committee that **Federal funds** be used to provide special population students with the best vocational education available.[30]

Senator Simon: *[in colloquy with Senator Pell]* This means that the [basic grant] funds are to be used solely for the benefit of individuals [who are members of special populations], including providing them with the supplementary services necessary for successful participation and for ensuring that the programs they receive are of the highest quality, including integration of academic and vocational training under the terms of section 229(b)(1)?

Senator Pell: That is correct.[31]

In still other cases, Members' statements indicated that States' and local recipient's obligations to serve members of special populations could extend beyond funding provided under the bills:

Representative Ford: [H.R. 7] assures that students who are economically disadvantaged, students of limited English proficiency, students with handicaps and women have access to vocational education and that they have **any special services** they need **in order to succeed**.[32]

Representative Bartlett: H.R. 7 would offer local school districts more Federal money to be concentrated in their poorest schools and to serve as an incentive to improve programs in which economically disadvantaged [students], handicapped students, and limited-English-speaking students participate . . . . In H.R. 7, 20 percent of a district's allocation would be based on the number of handicapped students, but use of these funds would not be restricted. **Instead, an LEA would be required to provide vocational education to any handicapped student**.[33]

Senator Cranston: *[in colloquy with Senator Pell]* These changes are in no way intended to provide a means by which States might

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[30]*Congressional Record*, v. 135, p. H1707. (Emphasis added.)

[31]*Congressional Record*, v. 136, p. S4095.

[32]*Congressional Record*, v. 135, p. H1705. (Emphasis added.)

[33]Ibid., p. H1715-1716. (Emphasis added.)

escape their responsibilities in addressing the needs of these special populations?

Senator Pell: Mr. President, the Senator from California (Mr. Cranston) is correct. The committee believes that the provisions in S. 1109 regarding the **responsibilities of the State would strengthen and expand services for disadvantaged populations.** The committee further believes that directing money to local providers **would help ensure that local areas provide essential services to the targeted populations**. In addition, S. 1109 contains **safeguards requiring each recipient of dollars to provide the supplementary services necessary to ensure that the needs of special populations are being served.**[34]

What, then is to be made of the language in the Act and supporting documentation on congressional intent? According to some current and former staff we interviewed, the intention was left "purposefully ambiguous."[35] Apparently both House and Senate wanted to remove the special populations' set-asides because they were fragmenting Perkins funds at the local level. The generally accepted philosophy was to improve the total vocational education program through a comprehensive plan, which would in turn provide better services to members of special populations. One view of whether Congress intended States and local recipients to spend funds in addition to Perkins funds for special populations was that they should spend a "reasonable" amount but not all their funds on these students. In this view, the language of the Act was left flexible so that States and local recipients could find various ways to serve special populations. Another explanation for the final wording of the Act was to avoid guaranteeing rights to special populations. Under this view, the intent of the legislation was more to support program reform and improvement than to provide services for special populations.

EDUCATION DEPARTMENT REGULATIONS

As previously noted, ED's regulations interpreting the Perkins Act added to the controversy over the interpretation of the special population provisions. In this section, we summarize current regulations, review reactions, and discuss recent developments--including the Department's intent to revise the Perkins Act regulations and Congress's delay of new regulations in this area.

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[34]*Congressional Record*, v. 136, p. S4096. (Emphasis added.)

[35]Staff from both the Senate and House and from both parties provided similar interpretations and used similar phrases.

Summary of the Regulations

After completing a process of negotiated rulemaking,[36] the Department of Education issued proposed Perkins Act regulations on October 11, 1991.[37] Following a period of comment and review, the Department issued final regulations on August 14, 1992.[38] The supplementary information for the final regulations provides an overview of the Department's interpretation of the purposes of the Act at the time the regulations were issued:

> *To focus Federal funds on improving vocational education and, in particular, on improving vocational education and services for members of special populations . . . . Under the Act, a State must make broad assurances that members of special populations will be given equal access to vocational education. In addition, an eligible recipient under Title II of the Act must make broad assurances that members of special populations will receive supplementary and other services* ***necessary to succeed*** *in the vocational education projects, services, and activities assisted with funds awarded under the State plan, and must give priority for assistance to limited numbers of sites or program areas that serve the highest concentrations of members of special populations.*[39]

For the most part, the regulations repeat or paraphrase language of the Act. However, in two important respects regarding services for special populations, the Department appeared to take a narrow interpretation of the Act's provisions:

- While stipulating that the assurances of equal access to vocational education required under section 118 are not limited to specific projects or activities funded under the Act, the final regulations specify that "a State is **not required to use non-Federal funds** to pay the cost of services and activities

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[36]Section 504 of the Perkins Act required the Department to hold regional meetings to obtain public involvement and conduct negotiated rulemaking (NRM) prior to issuing proposed regulations. The Department held four regional meetings between Oct. 30 and Nov. 15, 1990 and conducted NRM on Dec. 17 and 18, 1990. The Department chose three topics for NRM:

1. Whether program evaluations should be applied to an entire vocational education program;
2. A State's fiscal responsibility in providing equal access to special populations of poor and disabled students; and
3. Definition for four terms: "coherent sequence of courses," "equitable participation," "funding priorities," and "full participation."

(ED Picks Three Topics for Perkins Rulemaking Session. *Education Daily*, Dec. 13, 1990. p. 6. See also: *Federal Register*, v. 55, no. 240, Dec. 13, 1990. p. 51304.)

[37]56 FR 51448.

[38]57 FR 36721.

[39]57 FR 36720. (Emphasis added.)

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that it provides to members of special populations . . . ." 403.188 In other words, States are only required (as far as the Perkins Act is concerned) to use funds provided under the Act to support equal access and full participation of special population students. The Department based this interpretation on its reading of the Act and the relevant legislative history as creating neither "civil rights or individual entitlements to particular services for members of special populations" nor "an unlimited financial responsibility for a State to serve special populations" (p. 36722).

- The final regulations differentiate between "equitable participation" and "full participation." Equitable participation, according to the Department's interpretation, means providing the same opportunity to members of special populations and to members of the general student population **to enter** vocational education (p. 36831). "Full participation" applies only to those already enrolled in vocational education and is based on the supplementary and "other" services required for special population students **to succeed** in vocational education (p. 36828). Appendix A to Part 403 of the final regulations illustrates the difference between services to ensure equitable participation and full participation. A hearing-impaired student might require a sign language interpreter for equitable participation. An educationally disadvantaged student enrolled in vocational education might require a math tutor to fully participate in a vocational education program.

Reactions to the Regulations

The proposed and final regulations caused substantial controversy and negative reaction from some quarters. Six Members of the House Education and Labor Committee and the Senate Labor and Human Resources Committee wrote then-Secretary of Education Lamar Alexander to raise several objections to the regulations.[40] These Members discussed congressional intent in passing the 1990 amendments to the Perkins Act. Specifically with respect to special populations, they argued that the assurances of equal access in the Perkins Act were meant to reinforce and augment civil rights guarantees. Just as various civil rights laws "entitle students to equal access to the full range of educational programs," they argued that Congress intended that "students must have the opportunity to access any vocational education program with the support necessary to function equally, regardless of who pays for those supportive services."

Secretary Alexander, in response to the Members' letter, basically reiterated the Department's interpretations in the regulations. For example, he noted that:

> *I agree with you that special population members must be given equal access to vocational education, and must not be discriminated against on the basis of their status as members of special populations . . . . [However] I continue to believe that the Act does not create new civil rights or individual entitlements to particular*

[40]Letter signed by Representatives William Ford, Matthew Martinez, George Miller; Senators Edward Kennedy, Claiborne Pell, and Paul Simon to Lamar Alexander. Dec. 10, 1991.

services. I also do not believe that a State or eligible recipient has an unlimited financial responsibility to serve special populations students.[41]

Why did the Department decide upon this reading of the Act? According to information from the Department, there were several reasons. First, the Bush Administration was generally concerned about growing Federal regulation of State and local activity. During the period between the proposed and final regulations, the President in the State of the Union Address announced a 90-day freeze on all new Federal regulations that could hinder growth.[42] Some believe this reinforced ED officials' tendency to avoid imposing undue burdens on recipients of Perkins funds. In addition, some officials may have been concerned that if they broadly interpreted the requirements of the Act, States might turn back funds. Moreover, the Department's lawyers reportedly argued that the Act is ambiguous in important respects. For example, they apparently concluded that the term "program" is used in several, inconsistent ways. Without specific unambiguous language, they concluded that the Department had no authority to establish non-Federal financial obligations. Finally there may have been the view that it is improper for a program providing less than 10 percent of all vocational education funding to direct how more than 90 percent of funds should be spent. In some sense, the Department may have viewed the Perkins Act as a demonstration program to illustrate how to improve vocational education and serve special populations.

Recent Developments

Law Suit Against the Department. In December 1992, 10 groups[43] representing various special populations filed suit in U.S. District Court for the District of Columbia challenging the current regulations. The plaintiffs charge that the ED regulations fail to implement the Perkins Act on three counts:

- The plaintiffs objected that the ED regulations limit the mandate for equitable participation and services for special populations to only the "project" or specific activities described in applications for Perkins funds.

- They argued that the regulations further restrict the requirements for services to special populations by requiring schools to provide services only "to the extent possible" with Perkins funds.

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[41]Alexander, Lamar. Letter to William D. Ford, Chairman of the House Committee on Education and Labor. [no date] p. 2.

[42]Bush, George. *Address Before a Joint Session of the Congress on the State of the Union*. Jan. 28, 1992. In Public Papers of the Presidents of the United States. George Bush. Book I--January 1 to July 31, 1992. Washington, GPO, 1993. p. 159.

[43]The plaintiffs include: National Puerto Rican Coalition, Learning Disabilities Association, National Coalition of Title I/Chapter I Parents, The Center for Law and Education, The Council for Exceptional Children's Division on Career Development, The National Association for Bilingual Education, Vocational Evaluation and Work Adjustment Association, North Carolina Real Enterprises, Correctional Education Association, and The National Association of Vocational Assessment in Education.

- They maintained that the ED regulations limit the requirements for program evaluations to only the projects, services, or activities which receive Perkins funds and are described in local applications for Federal funding.

Based on these three counts, the plaintiffs maintained that the ED regulations are unlawful and should be changed to reflect what they believed to be the true intent of the Perkins Act. No court action has taken place since December 1992.

Proposal for Revised Regulations. Apparently, at least partially in response to this law suit, the Clinton Administration and ED considered revising the Perkins Act regulations that apply to special populations (and to evaluations). In April 1994, ED officials met with congressional staff and representatives from national educational organizations, State and local vocational education officials, and vocational education and special education advocates to discuss possible reinterpretation of the Perkins Act provisions for special populations. Following this and other meetings, the Department indicated its intent to promulgate new regulations. While revised regulations have never been proposed, the Assistant Secretary for Vocational and Adult Education and others have indicated that the revisions would have broadened the assurances for equal access and services for special populations. Among other things, the Assistant Secretary has said that the Department would change the "double negative" in the regulations that States are **not** required to use **non**-Federal funds for special populations' services.[44] Presumably States and local recipients receiving Perkins Act funds would then be required to use non-Federal funds if Perkins Act funds were insufficient to provide services necessary for special populations to have equal access to all vocational programs and activities.

Reactions to Proposed Revised Regulations. Many education groups, vocational education advocates, and Members of Congress opposed such changes. Congress sent several formal and informal signals to the Department warning of concerns and finally required ED to delay changes to the regulations with respect to special populations (and evaluation requirements) until the Perkins Act is reauthorized. Formal congressional action began on June 21, 1994, when the House Committee on Appropriations strongly encouraged the Department of Education to submit any regulatory changes to a negotiated rulemaking process.[45] Negotiated rulemaking would likely have added months to the process. Subsequently ED Secretary Richard Riley announced that he would not submit the new regulations to negotiations with the vocational education community.

Letters from various Members to Secretary Riley also expressed concerns about the proposed revisions. For example, a letter to Secretary Riley, signed by many minority Members of the House Committee on Education and Labor and by the ranking minority Member on the Senate Committee on Labor and Human Resources, argued that the

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[44]Assistant Secretary for Vocational and Adult Education Augusta S. Kappner. Briefing of representatives of State and local vocational education programs, interest group representatives, and other interested parties. Washington. Apr. 29, 1994.

[45]U.S. Congress. House. Committee on Appropriations. Report to Accompany H.R. 4606. Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Bill, 1995. H. Rept. 103-553. Washington, June 21, 1994. p. 133.

Department's proposed changes would directly conflict with recommendations based on recent empirical research on vocational education.[46] In addition, Members were concerned that the release of new regulations only 2 years after ED promulgated the original regulations would create confusion and extra administrative work for State applicants. Members also thought that the contemplated changes to the regulations would exceed the scope of the Perkins legislation and create an unfunded Federal mandate in violation of Executive Order 12875.[47]

A letter by Secretary Riley in July 1994, responding to congressional concerns, attempted to assure Members that the new regulations would not create unfunded mandates and would not create a new civil right, "in the sense that there will not be a new individual entitlement to services." He maintained that the Department's interest is purely in revising the regulations so that they are consistent with the intent of the legislation.

Despite Secretary Riley's assurances, the Senate adopted (by a vote of 63 to 37) an amendment to H.R. 6 (the Improving America's Schools Act to reauthorize various education programs) requiring ED to delay any regulatory revisions to the Perkins Act until the Act is reauthorized.[48] H.R. 6 was signed into law on October 20, 1994 (P.L. 103-382), containing a modified version of the amendment (section 563), which states that the regulations published in the Federal Register on August 14, 1992, related to special populations' participation in vocational education shall remain in effect until the Perkins Act is reauthorized.

CIVIL RIGHTS STATUTES AND THE PERKINS ACT

Civil Rights Statutes

Over the last 30 years, Congress has enacted a series of civil rights statutes, several of which appear, irrespective of the Perkins Act, to guarantee access to vocational

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[46]The letter was signed by Senator Kassebaum, Representatives Goodling, Armey, Fawell, Ballenger, Barrett, Boehner, Cunningham, Hoekstra, McKeon, Miller of Florida, and Castle.

Senator Kassebaum reiterated this argument on the Senate floor, citing the 1994 National Assessment of Vocational Education as follows: "Special populations students . . . are overrepresented in secondary vocational education. In 1992, the 34 percent of all high school graduates who were members of special populations groups earned 43 percent of all vocational credits. Special populations students are a somewhat larger proportion of all vocational students now than they were 10 years ago, and higher achieving students are a smaller proportion." (Senate. *Congressional Record*, Aug. 2, 1994. p. S10248.)

During floor debate, Senator Kennedy cited the National Assessment's findings to make the opposite point, noting that the study found particular problems in secondary school vocational education "where the special needs and limited English proficient students are not being included in the technical careers." (Ibid., p. S10249.)

[47]Executive Order 12875 prohibits (with restrictions) any executive department or agency from issuing regulations that create a mandate for State or local governments unless the Federal Government pays the direct costs of compliance or the agency consults with State and local representatives and communicates to the Director of the Office of Management and Budget their concerns and the agency's justifications for the mandate. See: 3 FR 669 regarding Executive Order 12875 of Oct. 26, 1993, *Enhancing the Intergovernmental Partnership*.

[48]This amendment was offered by Senator Kassebaum. (Senate. *Congressional Record*, Aug. 2, 1994. p. S10248.)

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programs and activities for members of certain special populations.[49] Because of interactions and overlaps between these statutes and the Perkins Act and because some argue that the Act builds on and extends civil rights guarantees, it is useful to understand what these statutes provide. Therefore, this section reviews the provisions of:

- Title VI of the Civil Rights Act of 1964;
- Title IX of the Education Amendments of 1972;
- Section 504 of the Rehabilitation Act of 1973; and
- Title II of the Americans with Disabilities Act of 1990 (ADA).

In addition, we will discuss the Individuals with Disabilities Education Act (IDEA) and Civil Rights Restoration Act, which clarified congressional intent regarding the coverage of civil rights legislation.

Title VI of the Civil Rights Act of 1964. Title VI[50] is important not only because it prohibits discrimination **on the basis of race, color, or national origin**, but because it has served as a model for other civil rights statutes. Section 601 of the 1964 Civil Rights Act states that:

> *No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance.*[51]

Title VI requires any Federal agency providing funds to programs or activities to enforce section 601. Each agency must issue regulations to effectuate these provisions. In cases of noncompliance, the agency must first seek voluntary compliance. If voluntary compliance cannot be obtained, the agency may--after a hearing--terminate funding.

In response to the February 1984 Supreme Court decision in *Grove City College v. Bell*,[52] which narrowly interpreted congressional intent with respect to the phrase "program or activity," the Civil Rights Restoration Act (P.L. 100-259) amended title VI (and several other statutes) to clarify that "program or activity" refers to all programs and activities of an entity receiving Federal funds, not just to the particular program or activity that directly benefits from these funds.[53]

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[49]Section 506 of the Perkins Act states that "nothing in this Act shall be construed to be inconsistent with appropriate Federal laws guaranteeing civil rights."

[50]For further information, see: U.S. Library of Congress. Congressional Research Service. *Civil Rights Protection in the United States: Brief Summaries of Constitutional Amendments, Federal Laws and Executive Orders*. CRS Report for Congress No. 93-148 GOV, by Leslie W. Gladstone. Washington, 1993. (Hereafter cited as U.S. Library of Congress, *Civil Rights Protection in the United States)*

[51]42 U.S.C. 2000d.

[52]465 U.S. 555 (1984).

[53]The decision in *Grove City* dealt with title IX regarding sex discrimination. The Supreme Court had ruled that title IX applied only to the student aid program, which directly benefitted from Federal funding, not to other (continued...)

Title IX of the Education Amendments of 1972. Modeled on title VI, title IX[54] prohibits educational programs or activities receiving Federal financial assistance from excluding participation, denying benefits, or discriminating, **on the basis of sex**. Title IX has the same enforcement provisions as title VI--Federal agencies issue regulations, seek voluntary compliance, and terminate funding only as a last resort. Title IX has also been amended by the Civil Rights Restoration Act to clarify the scope of "program or activity."

One way that title IX differs from title VI is that certain programs and activities are explicitly exempted from title IX requirements. These exceptions include undergraduate institutions that have traditionally been single-gender schools, institutions with the primary purpose of military training, tax exempted social fraternities and sororities, and single-gender youth organizations such as the Boy Scouts and Girls Scouts.

Section 504 of the Rehabilitation Act of 1973. Section 504[55] states that:

> *No otherwise qualified individual with a disability in the United States, as defined in section 7(8),[56] shall, **solely by reason of her or his disability**, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.*[57]

The Civil Rights Restoration Act amended Section 504 to clarify the meaning of "program or activity". Section 505 of the Rehabilitation Act references the procedures, remedies, and rights in title VI of the Civil Rights Act of 1964 as applying to section 504.

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[53](...continued)
programs or activities such as college athletics, which did not directly receive Federal funds. For further discussion of *Grove City* and the Civil Rights Restoration Act, see: U.S. Congress. Congressional Research Service. *Civil Rights Legislation: Responses to **Grove City College v. Bell***. CRS Archived Issue Brief No. IB87123, by Robert F. Lyke.

[54]For further information, see: U.S. Library of Congress, *Civil Rights Protection in the United States*.

[55]For further information, see: U.S. Library of Congress. Congressional Research Service. *Vocational Rehabilitation and Related Programs for Persons with Handicaps*. CRS Report for Congress No. 92-106 EPW, by Mary F. Smith. Washington, 1992.

[56]Section 7(8) defines an individual with a disability as one "who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such as impairment, or (iii) is regarded as having such an impairment." Certain individuals and conditions are excluded, such as individuals currently using illegal drugs, alcoholics, and those with contagious diseases that directly threaten health and safety.

[57]29 U.S.C. 794. (Emphasis added.)

Title II, Subtitle A of the Americans with Disabilities Act of 1990. Title II of ADA[58] extends civil rights protections for otherwise qualified individuals with disabilities to include services, programs, and activities provided by "**public entities**." Public entities as defined in the Act include State or local governments and instrumentalities of those governments. Thus access to State and local programs and activities and prohibitions of discrimination based on disability are provided irrespective of the receipt of Federal assistance. Regarding enforcement of these protections, title II states that the same remedies, procedure, and rights that apply under section 505 of the Rehabilitation Act--which are similar to those under title VI of the Civil Rights Act--apply to this title. Since all States currently receive Perkins funds, their vocational education programs are covered under section 504. However, if a State refused to accept Perkins funds--for example, to avoid abiding by requirements it deemed onerous--otherwise qualified individuals with disabilities apparently would still be protected against discrimination under ADA.

Individuals with Disabilities Education Act. The overall goal of IDEA[59] is:

> *to assure that all children[60] with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist States and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities.*[61]

While IDEA guarantees certain rights to children with disabilities and their parents, it differs from the previously mentioned Acts in that it also provides Federal funds to assist States and localities in fulfilling these rights. The centerpiece of IDEA is part B, which provides State formula grants based on the number of students with disabilities each State reports serving. Funded at $2.3 billion for FY 1995,[62] part B obligates participating States to provide all children with disabilities with free, appropriate education in the least restrictive environment.[63] The Act defines appropriate education as including **special**

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[58]For further information, see: U.S. Library of Congress. Congressional Research Service. *The Americans with Disabilities Act (ADA): An Overview of Major Provisions*. CRS Report for Congress No. 92-306 A, by Nancy Lee Jones. Washington, 1992.

[59] For further information, see: U.S. Library of Congress. Congressional Research Service. *Education of the Handicapped Act Amendments of 1990, P.L. 101-476: A Summary*. CRS Report for Congress No. 91-297 EPW, by Steven R. Aleman. Washington, 1991.

[60]In general, "all children" refers to children between the ages 3 and 21 unless this age range is inconsistent with a State's law or practice.

[61]20 U.S.C. 1400(c)

[62]Part B funding provides less than 10 percent of the "excess cost" of providing special education and related services to children with disabilities.

[63]All States voluntarily participate in the program.

education (designed to meet the unique needs of each child) and **related services** (for example, sign language interpretation) that are necessary for the child to benefit from special education. Among other obligations, participating States must assure that local education agencies maintain an individual educational program (IEP)[64] for each child with a disability and that each child is integrated into the regular classroom to the maximum extent possible. Finally, States and local education agencies must provide the opportunity for impartial due process hearings for parents' or guardians' complaints about a child's evaluation, placement, or provision of special education services.

Regulations and Guidelines

Title VI, title IX, and section 504 require Federal agencies making grants to issue regulations to effectuate the provisions of these statutes. Regarding ADA, the Department of Justice has issued regulations to effectuate that Act. ED has issued IDEA regulations.

In general, these regulations aim to clarify each Act and provide mechanisms and procedures to ensure compliance. For example, ED regulations for title VI outline a series of specifically prohibited actions amplifying the general prohibition of discrimination in the Act.[65] These regulations also provide complaint and enforcement procedures. For example, the title VI regulations require ED "from time to time" to review recipients' compliance. In addition, individuals or classes of individuals who believe they have been the subject of discrimination may file a complaint with the Department. The Department must promptly investigate any complaint or other information indicating "a possible failure to comply."[66]

In addition to general regulations for the above statutes, appendix B of the ED regulations for title VI contains specific guidelines on eliminating discrimination in vocational education programs based on race, color, national origin, gender, or disability. According to the summary published with the guidelines in the *Federal Register* (v. 44, no. 56, Mar. 21, 1979), the guidelines "explain the civil rights responsibilities of recipients of Federal funds offering or administering vocational education programs" and are derived from and supplement the title VI, title IX, and section 504 statutes and regulations. The Department issued these guidelines in compliance with orders resulting from *Adams v. Califano*,[67] which found that the Department had failed to enforce title VI provisions in several areas of education including vocational education.[68] The guidelines prohibit States from engaging in or approving discriminatory activities and require States

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[64]Among other things, the IEP must contain annual educational goals and short-term objectives and specific special education and related services aiming to achieve these goals and objectives.

[65]34 CFR 100.

[66]34 CFR 100.7a-c.

[67]430 F. Supp. 118 (D.C., 1972).

[68]Apparently Secretary Califano had intended to extend similar guidelines to other education programs but was not able to do so before he left office.

to monitor the civil rights compliance of their subgrant recipients such as school districts and postsecondary institutions.[69]

The guidelines contain a number of rather specific and wide ranging requirements, such as:

- "Recipients must locate vocational education facilities at sites that are readily accessible to both nonminority and minority communities, and that do not tend to identify the facility or program as intended for nonminority or minority students."

- "Recipients that operate vocational education programs must insure [sic] that counselors do not direct or urge any student to enroll in a particular career or program, or measure or predict a student's prospects for success in any career or program based upon the student's race, color, national origin, sex, or handicap."

- "Access to vocational programs or courses may not be denied handicapped students on the ground that employment opportunities in any occupation or profession may be more limited for handicapped persons than for nonhandicapped persons."

- Recipients must "insure [sic] that . . . students participating in cooperative education, work study and job placement programs are not discriminated against by employers or prospective employers . . . . Recipients may not honor any employer's request for students who are free of handicaps or for students of a particular race, color, national origin, or sex."

Promulgated in 1979, the appendix B guidelines are codified in appendix B of the title VI regulations. The ED Office for Civil Rights (OCR) apparently continues to monitor compliance. In its 1991 report to Congress, OCR reported that it evaluated 64 State[70] programs (or Methods of Administration--MOA) for monitoring civil rights compliance for their programs and for the programs of their subrecipients. OCR reported finding "major deficiencies" in six State plans. Five States submitted corrective plans, and OCR conducted a compliance review of the sixth.[71]

In addition to the appendix B Guidelines, IDEA regulations require LEAs to take steps to ensure that students with disabilities have available to them the same variety of educational programs and services available to nondisabled students. The regulations

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[69]Although these are guidelines, appendix B uses words such as "must" and "require" that give the impression of directives rather than guidance or suggested activities.

[70]Some States have divided responsibility for their vocational education programs. The 64 plans also included the District of Columbia, Puerto Rico, and the Virgin Islands).

[71]ED. Office for Civil Rights. *Annual Report to Congress*. Fiscal Year 1991. Washington. p. 10-11.

specifically mention vocational education.[72] Further, appendix C to the IDEA regulations clarifies that a disabled student who is to receive vocational education must have any needed modifications listed in his or her IEP. Modifications to the vocational education program included in the IEP must be provided by the LEA.

POLICY ALTERNATIVES AND ISSUES

As the 104th Congress considers the reauthorization of the Perkins Act, provisions affecting special populations likely will stimulate debate and disagreement just as they have in the past. On the assumption that concern for access of special populations will remain a priority, this section discusses possible advantages and disadvantages of four alternatives for providing members of special populations with access to vocational education:

- Use current civil rights statutes to ensure access;
- Enact current regulations;
- Enact ED's proposed regulatory changes; and
- Provide access for all students to high quality programs.

These alternatives do not exhaust all the policy options.[73] Rather these have been selected to highlight some of the issues Congress may face.

Policy Alternative 1: Use Current Civil Rights Statutes to Ensure Access

One option for providing access for special populations is to rely solely on protection of current civil rights statutes. As discussed above, the civil rights statutes require access to programs receiving Federal aid, prohibit the denial of benefits of such programs, and ban discrimination under such programs based on race, color, national origin, gender, or disability. Obviously vocational education in any State receiving Perkins Act funds is subject to these civil rights guarantees.

Possible Advantages. Relying on current civil rights statutes has the advantage of not requiring additional assurances in the Perkins Act, which could lead to further debate, disagreement, and confusion. The Civil Rights statutes have well established legal precedent and enforcement mechanisms in place. Moveover, Congress, as recently as 1988, debated and clarified the intent of these statutes in the Civil Rights Restoration Act.

In addition, reliance solely on civil rights statutes might clarify that a prime purpose of the Perkins Act is to improve vocational education for all students. Some argue that there is a tendency to interpret the Perkins Act as limiting Federal funds to services for special populations, even though the Act also requires funds to be spent to improve programs.

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[72]34 CFR 300.305.

[73]For example, another option would be to restore set-asides for special populations. Presumably any such proposal would need to discuss whether set-asides can be structured to avoid the criticisms--such as fragmented resources--raised during the last reauthorization.

Possible Disadvantages. Some worry that current civil rights statutes by themselves cannot ensure that special populations have access to high quality vocational education. One reason is that certain populations are not explicitly covered by these statutes--namely, the economically and educationally disadvantaged (including foster children) and individuals in correctional institutions. Clearly these populations may overlap with those covered by the civil rights statutes. For example, some educationally disadvantaged students--if they are also learning disabled--would be protected under IDEA, section 504, or ADA. However, as long as the Perkins Act aims to ensure access for special populations as currently defined, the civil rights statutes--while providing protection for some members of these populations--do not ensure equal access for all these populations.[74]

In addition, some argue that current civil rights statutes are insufficient even for covered populations. Some are concerned that OCR--the agency within ED charged with enforcement of civil rights statutes--has insufficient resources for comprehensive enforcement of these statutes.[75] Others worry that OCR may not vigorously enforce the law. For example, a 1988 report by the majority staff of the House Education and Labor Committee concluded that "since 1981, the Office for Civil Rights of the Department of Education has been stymied by an administration which actively opposed the laws which were entrusted to it and took efforts to minimize the agency's potential impact."[76]

Another concern is that even with diligent execution of the law by OCR, current mechanisms depend heavily on complaints registered by individuals or classes of individuals. Thus substantial responsibility for initiating investigations and remedies falls to victims of discrimination who may be unaware of their rights or unwilling or unable to seek redress. Furthermore, even if an alleged victim does initiate action by filing a complaint or a complaint is filed for a class of individuals, final resolution can take years and may be too late to remedy conditions harming those who originally complained.

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[74]Senator Harkin made a similar point during the debate over the Kassebaum amendment to delay new regulations to the Perkins Act:

> *I am sure the Senator, in her remarks, will say, look, this does not [*affect those with disabilities*] because they are covered under section 504 [and] under IDEA. That is right. So in vocational education we will have one track if you are physically disabled, mentally disabled; but if you are economically disadvantaged, if you come from a poor family and you may need special assistance or services, you are cut out of that. We will put you in the culinary arts program. But you will not be able to take computer programming because they do not receive Federal aid.*

(*Congressional Record*, Aug. 2, 1994. p. S10254.)

[75]For example, until Aug. 1994 when OCR held a national conference on civil rights and vocational education, it apparently had been years since OCR had provided much technical assistance on appendix B Guidelines.

[76]U.S. Congress. House. Committee on Education and Labor. *Investigation of the Civil Rights Enforcement Activities of the Office for Civil Rights U.S. Department of Education*. A Report by the Majority Staff. Committee Print. Washington, Dec. 1988. p. 6. An appended letter from the then-Assistant Secretary for Civil Rights (LeGree Daniels) expressed disappointment in the report as "replete with inaccuracies and misconceptions of OCR's role." (p. 282)

Policy Alternative 2: Enact Current Regulations

A second option would be to make the language of the Act explicitly correspond with the interpretations contained in current regulations. The Act would then treat Federal grants as discrete funds to be spent on a limited number of projects. Within those projects, schools would be required to ensure full participation for special populations through supplementary services, but schools would not be required to spend non-Federal funds on these services (unless required by other statutes). Civil rights statutes might be relied on to ensure access for covered groups. To the extent Congress decided to broaden access to other groups such as the disadvantaged some Federal funding could be provided.

Possible Advantages. By limiting the requirement for services, the Congress could avoid the presumably contentious debate that it was creating another "unfunded mandate"--see discussion on page 29. In addition, some argue that limiting funding for services to special populations could free Perkins funds for program improvement for all students--including members of special populations. Advocates of this position argue that Congress never intended access requirements to obtain beyond the specific activities funded.

Possible Disadvantages. Some worry that limiting required spending on special population services to Perkins Act funds could result in many districts spending **all** their Perkins Act funds on special populations. Even if State and local recipients knew they did not have to do this, they might allocate 100 percent to special populations as a strategy to protect against audit exceptions. Since the Perkins Act is the only Federal source of "flexible money" for program improvement (many districts spend most if not all State and local money on required costs such as teacher salaries and benefits), there would be no money to improve programs.

A possible consequence of these actions could be creating or perpetuating separate, possibly second-class programs mainly for the disadvantaged and students with disabilities supported by Federal funds. For example, a local grant recipient might put all of its Federal funds into a limited number of projects. Special populations students needing supplemental services would have little recourse but to enroll in those projects, with little opportunity to train for other fields.

Those who argue that Congress intended the Perkins Act to reform the entire vocational education system claim that it is a misinterpretation of the Act to apply equal access assurances only to projects receiving Perkins funding. Some argue that incorporating current regulations into a revised Perkins Act would continue to view Federal involvement in vocational education as narrow, categorical programs. Doing away with the Perkins Act set-asides for special populations, they argue, was intended to change this "paradigm."

Policy Alternative 3: Enact ED's Proposed Regulatory Changes

A third alternative for the Perkins Act reauthorization would be explicitly to broaden the Perkins requirements to cover a State's entire vocational system. This option would

resemble the Department of Education's proposed regulatory changes. All vocational education **programs and activities** in States receiving Perkins Act funds would be required to provide assurances of "full participation" by special populations. In addition, States and LEA's funds could be required to help pay for needed supplementary services.

Possible Advantages. Some advocates for special populations argue that this is the best approach for ensuring that members of these groups receive high quality vocational education. They worry that, except for the most "enlightened" communities, States and localities will not spend non-Federal funds on special populations unless they are required to do so. Without broad requirements, advocates argue, services for special populations will only be provided to the extent sufficient Perkins funds are available.

Supporters of this approach maintain that the charge of an unfunded mandate is not a valid one. Federal programs are often not limited by Federal dollars. Federal grants commonly serve as start-up funds or demonstration grants to be supplemented through State or local sources. Stipulating the conditions to be met by a grant recipient should thus not be considered an unfunded mandate.

Possible Disadvantages. Some observers argue that expanding financial obligations beyond Federal funds would expand mandates in two respects. First it would extend vocational education guarantees of access to groups not covered by civil rights acts. Moreover, some argue that the proposed regulatory changes go beyond existing civil rights provisions, even for students with disabilities. Civil rights provisions require **equal access** and **equal opportunity**. If enacted, ED's proposed changes, according to this argument, could mandate **affirmative services**, requiring the school to do everything it could to ensure that special population students actually **succeed**. These guarantees might require services such as tutors, child care, transportation, free vaccines, or clothing required for vocational courses.

This view of broadening access leads to the concern that Congress would create "another unfunded Federal mandate," i.e., Congress would require certain, possibly expensive, actions by States and local recipients without providing sufficient funding. Recent Federal education legislation illustrates congressional aversion to "unfunded mandates." See, for example, section 604 of the School-to-Work Opportunities Act (P.L. 103-239), which prohibits "an officer or employee of the Federal Government . . . [from mandating] a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act." In addition, States might turn down Perkins funding on the grounds that the relatively small amount of Perkins funding would be considerably less than the costs associated with providing supplementary services to special populations in all vocational programs.

Policy Alternative 4: Provide Access for all Students to High Quality Programs

A fourth option for reauthorization of the Perkins Act is to focus resources on program improvement efforts, while emphasizing access to all students. Grants might be

targeted to districts and institutions with high concentrations of disadvantaged students.[77] Funds would be provided only for vocational instruction that leads to high-skill occupations in areas of high demand, and recipients would be required to provide the opportunity for all students to participate in these projects. "All students" could be explicitly defined to include members of special populations. Grant recipients would then be required to evaluate projects using performance measures to determine whether their students are performing well.

Performance might be measured by increased student learning and program quality improvements, rather than solely by the numbers of special services provided. Performance measures could include indicators such as academic and occupational standards, program completion rates, and labor market success. Program evaluations could also include indicators of access for special populations, such as the numbers of students screened for entry into vocational courses, the number of special needs students present in vocational courses, and the proportion of students graduating successfully from these programs.

Possible Advantages. One advantage of this approach is that it would help align the Perkins Act with the recent trend in Federal education legislation towards less regulation and more flexibility tied to accountability.[78] Perkins project funding could be tied to occupational skills and standards which would be developed under the National Skills Standards Board and the School-to-Work Opportunities Act, and special population students would be required to meet the same standards as other students. This might help improve the overall image of vocational education and reduce the tendency to use such programs as "dumping grounds."

Possible Disadvantages. Advocates for special populations would probably oppose a revised Perkins Act that did not have specific guarantees and assurances for these students. They might be concerned that, without specific assurances, many local institutions (except the most progressive) will not adequately serve these students. Special population advocates might also object to substituting the "all students" language in the School-to-Work Opportunities Act for current provisions in the Perkins Act.[79] With no

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[77]This targeting might differ in at least one respect from current law, which uses substate formulas to target funds but also requires that funds be targeted to programs or sites with **high concentrations of special population students** (section 235(b)). Some worry that, because Perkins Act funds are channelled to programs in which special population students are already overrepresented and which arguably are of lower quality, the Perkins Act may unintentionally help to perpetuate a system of low quality programs for special populations.

[78]Apparently, this approach was being considered during the last reauthorization. The philosophy accepted by many Members was to try to improve the whole vocational education system through a comprehensive plan, which would in turn provide better services to special needs students. Those in need would be better served if the entire program were improved rather than if funds were spent directly on services to special populations. Congress did move one step in that direction by removing the special population set-asides in the 1990 Act.

[79]The School-to-Work Opportunities Act requires, for example, that States applying for implementation grants "describe the manner in which the State will ensure effective and meaningful opportunities for **all students** in the State to participate in School-to-Work Opportunities programs" (section 213(d)(13)). "All students" is defined as "both male and female students form a broad range of backgrounds and circumstances, including disadvantaged students, students with diverse racial, ethnic, or cultural backgrounds, . . . students with disabilities, students with limited-English proficiency, migrant children, school dropouts, and academically talented students" (section 4(2)).

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assurances or with the broad assurances of the School-to-Work legislation, advocates worry that States may not know specifically how to provide services. From this perspective, the Perkins Act needs to provide guidance for program planning, structure, and content.

Concerns also arise about performance-based accountability. One set of concerns is which outcomes to choose and who makes the decisions. Several kinds of performance might be considered for vocational education--including skill acquisition, program completion, and labor market outcomes. Some of these outcomes might be more reasonable than others under certain circumstances. For example, some would argue that holding vocational education accountable for whether a student gets a job is unfair because so many other factors influence the outcome.

Another concern is related to the "opportunity-to-learn" debate, which arose during the debate over the Goals 2000 legislation.[80] Some argue that it is unfair to hold all school districts and institutions to the same outcome standards until all have comparable resources to achieve those standards. Others argue that any Federal requirement or guarantee of equal resources leads to massive unfunded mandates unless the Federal Government is willing and able to pay to equalize resources.

A third concern is that determining whether or not a program is successful can take years. There is little concern if the program is ultimately successful. However, if it is discovered that a program failed 5 or 10 years from now, it might be too late for a "mid course" correction; and all the participants over the years were exposed to an ineffective or harmful program. Without input or service requirements, a student or parent may have no way of knowing that the program is inadequate.

CROSSCUTTING ISSUES

Regardless of which alternatives Congress considers regarding provisions for special populations under the Perkins Act, concerns and disagreements about **equity and quality** and about **unfunded Federal mandates** are likely to arise. While a comprehensive treatment of either of these topics is beyond the scope of this report, this section discusses possible related issues that might be raised.

Equity and Quality

Some argue that there are tradeoffs between equity and program quality. In the case of vocational education and the Perkins Act, this argument sometimes translates into concerns that providing equal access for all students would result in insufficient resources to promote high quality programs. According to this argument, using Perkins funds to provide supplemental services, such as classroom and equipment modification, to ensure the participation of special populations reduces funds for overall program improvement that could be used for modernizing equipment and providing inservice training for teachers

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[80]See: U.S. Library of Congress. Congressional Research Service. *Goals 2000: Overview and Analysis*. CRS Report for Congress No. 94-490 EPW, by James B. Stedman. Washington, 1994.

to upgrade their knowledge and skills. Some worry that, if no bounds are placed on spending for special population, no funds will remain for improving the overall quality of the program. A related concern is that, without improving vocational education to ensure high quality programs, providing access for special populations and for other students becomes moot. It makes little sense, according to this view, to provide access to second class programs. In addition, some blame Federal legislative requirements for an "overemphasis" on serving special populations. According to this view, these requirements not only eliminate funds that could be used for improving quality but lead to special populations' overrepresentation in vocational programs, which in turn contributes to the image of vocational education as a dumping ground and second class program.

Others argue that there need not be a tradeoff between equity and quality. In this view, ensuring access and improving overall program quality can be complementary. A cited strategy for improving vocational education is to integrate it with academic coursework. Most schools today teach self-contained academic courses such as English and geometry independent from vocational courses, even though the latter require students to use communication and math skills. An integrated approach would teach academic subjects in coordination with vocational courses. Arguably students in vocational education courses would be better prepared with the academic skills they need and would apply themselves more vigorous in their academic courses because they realize the practical applications of English, math, science, and other subjects. The Perkins Act recognizes the importance of integrating academic and vocational courses and requires that programs funded under the Act aim to accomplish this goal. Some contend that academic-vocational integration not only improves the overall program but helps members of certain special populations participate fully in vocational education. For example, some students with learning disabilities may learn more effectively in settings in which they can apply abstract lessons to concrete problems and examples. Thus, in this view, funds spent to improve the overall program by integrating academic and vocational courses also enhance access for certain special populations.

Unfunded Mandates[81]

While a comprehensive discussion of Federal mandates is beyond the scope of this report, several points can be made in discussing unfunded mandates with respect to the Perkins Act reauthorization:

Definitions Differ. Some maintain that unfunded mandates exist or are created whenever the Federal Government (whether the courts, executive branch, or Congress) imposes requirements, responsibilities, actions, procedures, etc., on States and localities without providing sufficient funds to carry them out. Others argue that such a sweeping definition basically encompasses nearly all domestic Federal activity and that requiring full

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[81]For further discussion of Federal mandates, see: U.S. Library of Congress. Congressional Research Service. *Mandates and the Congress*. CRS Report for Congress No. 93-441 GOV, by Sandra S. Osbourn. Washington, 1993 (Hereafter cited as U.S. Library of Congress, *Mandates and the Congress)*; and Derthick, Martha. Federal Government Mandates: Why the States are Complaining. *Brookings Review*, v. 10, fall 1992. p. 50-53.

Federal funding for all mandates under this definition would curtail, if not eliminate, Federal policy options. From this prospective, some argue that certain mandates should not be subject to Federal reimbursement: those with trivial cost, those related to constitutional and statutory rights of individuals, and those that flow from conditions of specific Federal aid programs, among others.[82]

Concerns Seem to Have Increased in Recent Years. Concern about Federal requirements on State and local governments has a long history, which can be traced to the civil rights revolution of the 1950s and 1960s, to New Deal legislation, or arguably to the ratification of the U.S. Constitution. Moreover, complaints about unfunded mandates are not new. For example, then-New York City Mayor Edward Koch complained about "mandate millstones" in 1980.[83] However, complaints and concerns seem to have increased toward the end of the 1980s and into the 1990s in part because the recession made States, most of which are required to balance their budgets, less able to meet their own priorities and also provide for federally required expenditures.[84]

Even Many Opposing Unfunded Mandates Concede That Some Federal Mandates are Useful. For example, Ohio Governor George V. Voinovich noted that "Federal mandates can be useful . . . in providing needed services . . . in setting technical standards . . . [and in imposing] uniform rules across the country . . . ." What aggravates Voinovich and others is "activism on the cheap, and . . . Congress' insistence that new Federal policy initiatives be paid for out of state budgets."[85]

Refusing Federal Funds Does Not Necessarily Eliminate Federal Mandates. Turning back specific Federal program funds does not necessarily alleviate States of Federal obligations. For example, refusing Perkins Act funds would not remove vocational education programs and activities from Federal civil rights obligations. Even if all funds were refused, many obligations would remain. For example, State and local obligations with respect to individuals with disabilities would still apply under the ADA.

Costs of Mandates Are Difficult to Estimate. Some States have begun to estimate what Federal mandates cost. For example, the State of Ohio has estimated that unfunded Federal mandates will cost the State $1.3 billion between 1992 and 1995.[86] Regarding the Perkins Act, the Ohio study faults the Act for reducing funds for State activities while imposing "costly new administrative activities to emphasize accountability." The report estimates that these mandates, which include assessing "program effectiveness and student

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[82]U.S. Library of Congress, *Mandates and the Congress.*

[83]Ibid., p. 3, note 6.

[84]Ibid., p. 6

[85]The State of Ohio. Washington Office. *The Need For a New Federalism: Federal Mandates and Their Impact on the State of Ohio.* Aug. 1993. p. 2. (Hereafter cited as The State of Ohio, *The Need for a New Federalism)*

[86]Ibid., p. iii.

progress," will cost the State $15.07 million over 4 years.[87] At the same time, some argue that "today, estimates of the cost of federal mandates are 'mainly pulled out of the air.'"[88] This may be especially true when attempting to estimate costs while legislation is being crafted, i.e., before requirements are specifically determined. On the other hand, critics may cite this as the crux of the problem: vague language in some Federal statutes may lead to large, unforeseen costs.

Because the costs are difficult to estimate,[89] opinions differ on how costly supplementary services for special populations are, and whether the Perkins Act is the only source of funds. Supporters of comprehensive coverage maintain that costs associated with the mandate may not be prohibitive. The costliest services are typically for students with severe disabilities, who account for a small percentage of special populations students. According to this view, per-pupil service costs for students with milder disabilities, disadvantaged students, and LEP students are considerably lower. In addition, some observers claim that many services for special populations should already be provided. For instance, if a student with a disability needs a particular service in **all** of his or her classes, then that service should be funded through IDEA. Only if it is a unique requirement for the vocational education class, should funds come from the Perkins Act.

Others argue that additional sources of funds are rarely available to provide supplementary services for vocational education programs. For example, title VII bilingual funds tend to be spent more in elementary education, and are rarely available for vocational programs. IDEA funds are usually insufficient to meet all needs. It is possible that requiring comprehensive coverage would effect States differently. For those States that already provide supplementary services to special populations, the increased costs could be minimal. For other States that are not currently providing these services, the cost increases could be substantial.

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[87]Ibid., p. 15. Ohio receives approximately $50 million a year under the Perkins Act.

[88]U.S. Library of Congress, *Mandates in the Congress*.

[89]Apparently no one knows how much of Perkins funds State and local recipients spend on special populations. The Department of Education appears to require States to report expenditures in categories corresponding to the permitted uses of title II funds in section 235(c), e.g., curriculum upgrading, inservice training, equipment, and guidance and counseling. States are not (and probably could not) report how much of the funds in these categories are spent for special populations. Moreover, not all States have provided data for FY 1992, the most recent year for which data are available.

APPENDIX: THE 1990 PERKINS ACT REAUTHORIZATION AND SPECIAL POPULATIONS[90]

As background for 104th Congress' consideration of provisions for special populations under the Perkins Act, the following summarizes the major legislative provisions pertaining to these populations in the House bill H.R. 7, the Senate bill S. 1109, and the final statute (P.L. 101-392), which reauthorized the Perkins Act in 1990. Only those provisions directly pertaining to special populations are discussed. Each section summarizes the provision in current law, outlines related provisions in the House and Senate bills, and details the final compromises reflected in current law.

State Plan (*section 113*)[91]

The Perkins Act requires States to submit to the Secretary of Education a multi-year State plan to describe each State's distribution of funds and to assure compliance with the provisions of the Act.

H.R. 7 (as passed by the House) would have required State plans to:

- assess the labor market needs of special populations;
- assess the responsiveness of programs to the needs of special populations;
- assess the capacity of local programs to deliver services necessary to meet the needs of special populations;
- determine how Perkins funds will be used to meet the needs of special populations;
- describe how the State will comply with the criteria for services for special populations (see below--Assurances of Services for Special Populations);
- describe how special population students in private schools will be able to participate in Perkins programs;
- describe how the State will develop and implement standards and measures of performance (see below--Performance Measures, Assessments and Program Evaluation);

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[90]**P.L. 101-392**, the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, became law on Sept. 25, 1990. The 1990 legislation made comprehensive amendments to the Carl D. Perkins Vocational Education Act of 1984 and extended the authorization of Perkins Act programs, as amended, through FY 1995.

[91]Section numbers refer to sections of the Carl D. Perkins Vocational and Applied Technology Education Act.

- describe how Perkins programs will be coordinated with ESEA Title I, Chapter 1, Individuals with Disabilities Education Act (IDEA), and Rehabilitation Act programs;

- describe how the State will implement local program evaluations (see below--Performance Measures, Assessments and Program Evaluation).

S. 1109 (as passed by the Senate) included similar provisions and, additionally, would have required States to:

- develop goals and accountability measures for meeting the needs of special populations, and monitor the progress of local programs to ensure that they are meeting these goals.

- address the improvement needs identified in the State assessment (see below--Performance Measures, Assessments and Program Evaluation);

P.L. 101-392 combines provisions of both bills by requiring State plans to:

- describe how the State will comply with requirements for services for special populations;

- describe program responsiveness to the needs of these populations;

- assure that measurable goals and accountability measures are developed related to the needs of these populations;

- assure that the State will monitor whether these goals are being met;

- assure that provisions are made for the participation of special populations attending private secondary schools; and

- describe how the State will comply with section 118 regarding criteria for services for special populations (discussed below).

Performance Measures, Assessments and Evaluations (*sections 115, 116, 117*)

Each State receiving Perkins funds must develop and implement a Statewide system of standards and measures of performance for State and local vocational programs, must assess program quality, and must evaluate the performance of vocational education programs in secondary schools and postsecondary institutions.

H.R. 7 stipulated that standards of performance should provide incentives for schools to serve special populations, and should be adjusted for students with disabilities. States would have had to evaluate all programs to determine whether special populations have access to high quality vocational education programs.

S. 1109 would have required States to assess the ability of programs and local recipients to meet the needs of special populations. State boards would have assessed the improvements needed to ensure that at-risk populations obtain the assistance necessary to enroll and succeed in high quality programs and to raise the quality of vocational education programs in schools with high concentrations of poor and low-achieving students. Local recipients would have had to evaluate the effectiveness of programs in meeting the needs of special populations. Evaluations would have been conducted with the participation of representatives of special populations. If, after 1 year, a local recipient was not making progress in meeting these standards, the recipient would have been required to develop, with the help of the State, a plan for program improvement, including a description of the supplementary services which would be provided to overcome barriers to access or success for special populations.

P.L. 101-392 includes provisions from both bills. States must develop and implement standards and measures of performance in consultation with a State Committee of Practitioners.[92] These standards and measures are to "apply to all programs assisted under this Act." Incentives or adjustments are required to encourage services for special populations. State assessments of program quality may examine (among other things) the ability to meet special populations' needs. Secondary, postsecondary, and adult vocational programs are required annually to "evaluate the effectiveness of the program conducted with assistance under this Act" using the State-developed standards and measures. Evaluations are to identify and adopt strategies to overcome barriers to access or barriers to success for members of special populations as well as to assess the progress of members of special populations in "programs assisted under this Act." Local improvement plans are required for local recipients not making "substantial progress" to meet State standards and measures.

Assurances of Services for Special Populations (*section 118*)

> The Perkins Act removes most set-asides for special populations, but requires States and local recipients of Perkins funds to provide assurances that special populations will be adequately served by vocational education programs.

H.R. 7 would have required States to provide the following assurances for members of special populations:

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[92]The Committee consists of representatives of local educational agencies, school administrators, teachers, parents, local board of education members, representatives of institutions of higher education, and students.

- equal access to recruitment, enrollment, and placement service;
- equal access to the full range of vocational education programs available to other students;
- equal access to career guidance and counseling services;
- LEP students and disadvantaged students will have access to vocational education in the most integrated setting possible;
- students with disabilities will have access to vocational education in the least restrictive setting possible and in a manner consistent with the student's individualized educational program (IEP);
- students with disabilities will be protected under the Individuals with Disabilities Education Act (IDEA) or under section 504 of the Rehabilitation Act (depending on whether a student has an IEP under IDEA or not);
- requirements will be carried out under the supervision of the State agency responsible for special populations.

Local recipients would also have had to provide assurances related to special populations:

- assess the needs of special populations for successful completion of vocational education programs in an integrated setting;
- provide supplementary services, including adaptation of curriculum, instruction, equipment and facilities, support personnel, instructional aids;
- provide guidance, counseling, and career development services generally and to facilitate the transitions from school to work.

In addition, local school districts would have had to provide students from special populations with information about vocational education opportunities, eligibility requirements, available courses and special services, employment opportunities, and placement. Finally, States would have been required to establish procedures for parents, students, teachers, and others to influence and, if necessary, appeal State and local program decisions.

S. 1109 took a different approach. It explicitly listed the special populations to be served under Perkins and stipulated that local recipients use funds to provide services "designed to meet the special needs of, and to enhance the participation of" special populations. The Senate version included much the same requirements for services to special populations as the House version, but listed the provisions separately by programs for the economically disadvantaged, students with disabilities, LEP students, and eliminating gender bias.

P.L. 101-392 basically follows the structure of the House bill, including the same requirements as the House version. In addition, local recipients must assist students from special populations to *enter* vocational education programs, and to assist students with disabilities to fulfill the transitional service requirements of section 626 of IDEA.[93]

Local Applications (*section 240*)

> The Perkins Act requires any eligible recipient (defined as local education agencies, area vocational schools, intermediate educational agencies, postsecondary educational institutions, and State corrections educational agencies) desiring assistance to submit an application to the State board of vocational education. The application must conform with the requirements established by the State board, describe the program proposed to be funded, and provide assurances of services to special populations.

H.R. 7 would have required local secondary and postsecondary institutions to submit applications describing how:

- access to programs of good quality would be provided to special populations through affirmative outreach and recruitment;
- programs would facilitate the transition of special populations students from the educational system to employment or additional training;
- the provision of vocational education to students with disabilities would be monitored.[94]

S. 1109 would have required that local applicants[95] describe compliance with the "Use of Funds" section and added that applicants must:

- ensure that programs would meet the requirements under "Services to Special Populations" (see above);

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[93]Section 626 permits the Secretary of Education to make grants to various educational entities such as institutions of higher education and school districts to improve services to students with disabilities to make successful transitions to post-school activities such as postsecondary education, competitive job placement, and independent living arrangements.

[94]H.R. 7 would have required local recipients to describe how they would use Perkins funds to serve schools or "locations" with the highest numbers or percentages of students in special populations and with programs in greatest need of improvement. Assistance to improve these programs would then be provided that met several criteria including support services for special populations. These provisions were incorporated in somewhat different form in section 235 of current law, discussed below.

[95]These included local education agencies, area vocational schools, intermediate educational agencies, and State agencies responsible for corrections education.

- report the number of individuals in each special population;
- assess the needs of special populations and the funds used to meet those needs;
- identify the planned use of resources to meet those needs;
- ensure full and equitable participation by special populations in quality programs;
- describe the applicant's performance evaluation standards; and
- describe how programs are developed in consultation with parents and students of special populations.

P.L. 101-392 includes all of the House and Senate provisions **except for**:

- a description of transition services for special populations in the House bill and
- ensuring full and equitable participation by special populations in quality programs in the Senate bill.

In addition, current law requires eligible recipients' applications to:

- monitor the provision of services to **all** special populations students, not just disabled students;
- describe how Perkins funds *and other resources* will be used to improve the program with respect to uses of funds (which are discussed below under section 235); and
- describe methods used to develop vocational educational programs in consultation with parents and students of special populations.

Review of Local Applications (*section 111*)

> Under the Perkins Act, the State board of vocational education must designate the State officials overseeing special education, Chapter 1, and LEP programs to review eligible recipients' plans regarding services to special populations.

H.R. 7 had no specific provisions for the review of local applications by the heads of State offices for special populations.

S. 1109 provided for a review of all local eligible recipients' plans by State officers in charge of special populations groups. The bill would have required States to designate

the head of the State office responsible for administering the Individuals with Disabilities Education Act (IDEA) to review all local plans to assure that individuals with disabilities were receiving vocational educational services in compliance with IDEA and section 504 of the Rehabilitation Act of 1973; and to assure that students with disabilities in vocational programs had been identified, that their needs had been assessed, and that local recipients had developed an adequate plan to provide supplementary services to meet their needs. Similarly, States would have had to designate the heads of the State offices responsible for Chapter 1 services and LEP services to review local plans to ensure that economically disadvantaged students and LEP students had been identified and that their needs were being met.

P.L. 101-392 parallels the Senate version, except that the representatives of the three special population groups may review **all or a representative sample** of plans of eligible recipients.[96]

Uses of Funds (*section 235*)

> The Perkins Act provides broad requirements for the use of basic State grants, including "full" and "equitable" participation of special populations in programs funded under the Act, priority for funding to sites with high concentrations of special populations, and integration of academic and vocational education.

H.R. 7 stipulated that Perkins funds be given to programs that *first* serve schools with the highest concentrations of special populations and that "have the greatest need for improvement." Furthermore, funds would have to be used for programs that:

- were of "such size, scope, and quality as to be effective;"
- offered and encouraged students to pursue a coherent sequence of courses leading to a job skill;
- integrated academic and vocational education;
- assisted students from special populations to succeed through supportive services such as counseling, English-language instruction, child care, and special aids; and
- cooperated with sex equity program activities.

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[96]As previously discussed, the Perkins Act requires local applications from eligible recipients desiring to receive funds but does not explicitly require local plans.

S. 1109 focused more on special populations. It stipulated that State basic grant funds to secondary programs be used first for the benefit of special populations.[97] Perkins funds were to be used to support additional staff, equipment, materials, and services for the successful participation of special populations. Funds were also to be used to ensure that programs for such individuals were of the highest quality and state-of-the-art. The bill specified that States could use Perkins funds for curriculum development and program improvement for other students only after the needs of special populations had been met. The services provided for special populations were to be determined with the participation of students, parents, counselors, teachers, and members of the community. Postsecondary program funds, however, were not *limited* to services for special populations, but the State was required to give *priority* to programs serving these populations.

P.L. 101-392 provisions for use of funds differ from both the House and Senate bills, having the following basic stipulations about use of funds:

- In general, Perkins funds must be used for improving vocational education **programs**, "with the full participation of individuals who are members of special populations, at a limited number of sites or with respect to a limited number of program areas;"

- Priority is to be given to assistance in sites or programs serving the highest concentration of special populations; and

- Funds are to used in programs that (1) are to have sufficient size, scope, and quality to be effective; (2) integrate academic and vocational education within programs having coherent sequences of courses; and (3) "provide equitable participation" for special populations in these programs.

Section 235 also contains a list of permitted activities including supplementary services for special populations[98] and a special populations coordinator to ensure that members of special populations receive adequate services.

Intrastate Distribution (*sections 231, 232*)

> The Perkins Act specifies intrastate formulas and minimum grants for secondary and postsecondary programs based mainly on proxies for poverty: an LEAs proportion of title I funding within a State and a postsecondary institution's proportion of Pell grant recipients within a State.

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[97]Apparently other students could be served if the needs of special population students are being met. Up to 5 percent of a local grant could have been used for administrative purposes, but administrative funds would have to be used in part for a special populations coordinator to ensure that special students were receiving required services.

[98]Section 521 defines supplementary services to mean "curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices."

Intrastate Formulas. **H.R. 7** would have required States to allocate basic grant funds for secondary school programs to local educational agencies (LEAs) based on three criteria: their proportion of Chapter 1 basic grant funds (70 percent of the allocation), their proportion of students with disabilities (20 percent of the allocation), and overall student population (10 percent of the allocation). Similarly, funds for postsecondary programs would have been distributed to eligible institutions based on Pell grant and Bureau of Indian Affairs (BIA) grant recipients (70 percent), students with disabilities (20 percent), and enrollment (10 percent). **S. 1109** would have required allocations to LEAs based solely on the proportion of Chapter 1 basic and concentration grant funds received by an LEA. The Senate bill allowed States to determine postsecondary funds allocation. **P.L. 101-392** resembles the House version for the allocation of secondary school funds, but requires that postsecondary funds be distributed based only on Pell grant and BIA grant recipients.[99]

Minimum Grant Amounts. **H.R. 7** would have required that a secondary school provider receiving a grant of $5,000 or less must join a consortium to be eligible. **S. 1109** would have set a $25,000 minimum for secondary school providers. **P.L. 101-392** sets a $15,000 minimum for secondary program grants and a $50,000 minimum for postsecondary grants.[100]

Other Provisions

The Perkins Act includes other provisions relevant to the access of special populations to vocational education programs:

- *National Assessments (section 403)*: **P.L. 101-392** requires ED's Office of Educational Research and Improvement (OERI) to conduct a national assessment of vocational education programs. **S. 1109** and **P.L. 101-392** added to the House's list of assessments an evaluation of special populations' access to high quality vocational education programs;

- *Data Systems (sections 421, 423)*: **P.L. 101-392** requires ED to establish a national data system which will include information on the participation of special populations in vocational education. **H.R. 7** and **P.L. 101-392** commission the GAO to conduct a 3-year comprehensive study of the effects of the new Perkins legislation on the access to and participation of special populations in vocational programs;

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[99]States can apply for an alternative formula to target economically disadvantaged students and adults using participation in publicly-funded student aid, Aid to Families with Dependent Children, or Job Training Partnership Act programs.

[100]The House and Senate bills also differed on whether to specify the allocation of State basic grant funds between secondary and postsecondary programs. The **House** bill did not specify a secondary-postsecondary split. The **Senate** bill specified that States should allocate between 65 and 75 percent for secondary and the remaining 25 to 35 percent for postsecondary programs. The Senate emphasized secondary education to target the problems perceived to be most critical in educationally disadvantaged areas--high school dropout rates, teenage unemployment rates, and drug and alcohol abuse. **P.L. 101-392** does not allocate funds between secondary and postsecondary programs, leaving this decision to the States.

- *Interstate Formula Alternatives (section 403)*: **S. 1109** and **P.L. 101-392** commission ED to undertake a study of the interstate formula to determine if the current distribution formula successfully targets funds to States having the greatest need for federal assistance. Under the current formula, grants are allotted in proportion to the State's population by age, with an adjustment for State per capita incomes. The study examined alternative methods of distributing funds between States. Indicators of need include the poverty rate of the school-aged population, relative tax capacity, gross State product per school-aged child, high school drop out rate, unemployment rate, and percentage of State revenues expended on education;[101]

- *Civil Rights Guarantees (sec 506)*: **H.R. 7** and **P.L. 101-392** clarify that nothing in the Act should "be construed to be inconsistent with appropriate Federal laws guaranteeing civil rights;"

- *Exception to Supplement, not Supplant, Requirements (section 516(a)(1)(B))*: **S. 1109** and **P.L. 101-392** permit an exception to the requirement that Perkins funds are to supplement State and local funds, namely, that Perkins funds may be used for "vocational services" required in an IEP under IDEA or necessary to ensure equal access under section 504 of the Rehabilitation Act of 1974; and

- *Definition of Special Populations (section 521(31))*: **H.R. 7** and **S. 1109** appeared to remove the term "academically disadvantaged" from the definition of the disadvantaged, limiting the definition to **economically** disadvantaged. However, the **P.L. 101-392** includes **academically** disadvantaged individuals in the definition of the disadvantaged and includes **educationally** disadvantaged (as well as economically disadvantaged) individuals in the definition of special populations.[102]

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[101]Barro, Stephen M. *The Interstate Distribution of Federal Funds for Vocational Education*. SMB Economic Research, Inc. Washington, Feb. 1994.

[102]The Perkins Act regulations define academically disadvantaged to include any individual who scores at or below the 25th percentile on a standardized achievement or aptitude test, whose high school grades are below 2.0 on a 4.0 scale, or who fails to attain minimum academic competencies. (34 CFR Part 400.4(b))

Some who oppose including the academically disadvantaged among special populations argue that States have targeted academic disadvantaged students in order to serve otherwise middle class students and avoid serving those who are economically disadvantaged. For example, Representative Hawkins in the floor debate on H.R. 7, said that "many States used the term academically disadvantaged to direct funds away from poorer school districts into wealthier ones." (*Congressional Record*, v. 135, p. H1708.)